

## EXHIBIT B

65VVVILH

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

05 CR 621 (KMK)

ALBERTO VILAR,  
GARY TANAKA

SUPPRESSION HEARING

Defendants.

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New York, N.Y.  
May 31, 2006  
10:05 a.m.

Before:

HON. KENNETH M. KARAS,

District Judge

APPEARANCES

MICHAEL J. GARCIA  
United States Attorney for the  
Southern District of New York  
DEIRDRE McEVOY  
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Assistant United States Attorneys

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-AND-

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Litt - direct

1 couldn't instruct him to tell his employees what to do or what  
2 not to do. But that at this point the government would prefer  
3 if they did not have contact with Mr. Vilar.

4 And I should back up, because I recall one other part  
5 of our first conversation that I distinctly recall. And that  
6 is, Mr. Licker indicating to me that he wanted to be  
7 cooperative with the government; and he also in that first  
8 call, after saying that, he mentioned to me that in other  
9 cases, he had sometimes put into place a procedure to prevent  
10 documents from being destroyed, and things of that nature. And  
11 he asked me -- or sort of a document retention policy. And  
12 asked whether the government would like him to do so in this  
13 case. And I told him that I thought that would be a good idea.

14 Q. What, if any, other subjects do you recall discussing with  
15 Mr. Licker during one of those two morning calls?

16 A. During one of those two morning calls, Mr. Licker asked me  
17 whether the government intended to serve Amerindo with a grand  
18 jury subpoena.

19 Q. How did you respond to Mr. Licker's question about whether  
20 the government intended to serve Amerindo with the grand jury  
21 subpoena?

22 A. I responded that I didn't know, and that I'd have to get  
23 back to him.

24 Q. Who first raised the issue of a grand jury subpoena?

25 A. Mr. Licker.

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Litt - direct

1 Q. At that point of that conversation, had a grand jury  
2 subpoena been issued?

3 A. No.

4 Q. Before that phone call with Mr. Licker, had you discussed  
5 the possibility of issuing a grand jury subpoena with anyone?

6 A. No.

7 Q. Prior to the phone call of Mr. Licker, had you considered  
8 issuing a grand jury subpoena to Amerindo?

9 A. No.

10 Q. After that phone call with Mr. Licker, who, if anyone, did  
11 you consult with about whether to issue a grand jury subpoena?

12 A. I consulted with the supervisor in the securities and  
13 commodities fraud unit.

14 Q. And who was that?

15 A. David Esseks, E-s-s-e-k-s.

16 Q. What, if anything, did you discuss with Mr. Esseks about  
17 the subject of a grand jury subpoena?

18 A. I told Mr. Esseks the substance of the phone call with  
19 Mr. Licker; that Mr. Licker had raised that question. And I  
20 asked him whether he thought that was a good idea or not.

21 Q. When you say "a good idea," what was a good idea?

22 A. To issue a grand jury subpoena.

23 Q. And what was his response with respect to your question  
24 about whether it was a good idea to issue a grand jury  
25 subpoena?

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Litt - direct

1 A. I tried to communicate the substance of it, a summary of  
2 what I just said: That Mr. Licker said everyone was tired and  
3 wanted to go home, and there was a lot of work left to be done;  
4 and his offer to complete the process through the grand jury  
5 subpoena rather than through the search.

6 And there's one other thing that I recall that he said  
7 to me, which was that it would be more efficient -- was another  
8 thing that he said to me, that it would be more efficient and  
9 we wouldn't -- and less disruptive to Amerindo's business to  
10 proceed in that way. And that if we proceeded by government  
11 subpoena, the government would get what it really wanted I  
12 believe is the phrase that he used, instead of having to take  
13 so much material.

14 Q. Do you recall the postal inspector's response?

15 A. Not specifically, no.

16 Q. What, if anything, did you communicate with Mr. Licker  
17 about whether you agreed to his suggestion?

18 A. I don't recall whether I spoke to Mr. Licker again that  
19 day.

20 Q. And what, if any, instructions do you recall giving the  
21 postal inspectors about terminating the search?

22 A. I don't recall.

23 Q. Do you know if the postal inspectors terminated the search  
24 nearly after the conversation you had with Mr. Licker about  
25 terminating the search in lieu of the grand jury subpoena?

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